



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 8070117

Date: JUNE 3, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a financial services entrepreneur, seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as an individual of exceptional ability, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualified for the underlying EB-2 visa classification. The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

Regarding his claim of eligibility under *Dhanasar*'s first prong, the Petitioner indicated that his proposed endeavor as an entrepreneur involves providing "services to U.S. companies, institutions, and individuals in need of expert advice in the accounting, financial, commercial, and management areas." He asserted that he plans "to continue managing and directing my firm [redacted]" an accounting and tax services company located in [redacted] Florida. The Petitioner further explained that he intends "to consult and support businesses, entrepreneurs, start-ups, companies, and individuals in the U.S. such as how to open and register a business, tax accounting consulting, business marketing, and bookkeeping to private and public companies." He also noted that his proposed work includes serving "as liaison to provide mutually proactive business relationships between American and South American businesses" and offering quality services to his clients in different areas such as marketing, business operations, and administration. In addition, the Petitioner stated:

My goal is to use my expertise serving companies in Brazil by offering continuous and reliable strategic economic and financial advice and services to help Brazilian and U.S. companies expand their business and increase productivity, proactivity, and profitability. My services will contribute to a better management in the administrative, financial, human resources, and tax sectors by investing in top notch American professionals, not only generating more jobs, but maintaining the high-quality and professionalism that characterizes this nation worldwide.

The Petitioner submitted [redacted]'s business plan that includes market analyses, business strategies, financial forecasts and projections, and a description of company management and personnel. With respect to future staffing, the Petitioner's business plan anticipates that [redacted] will have "at least three employees" as the company commences its operations. In addition, his plan offers sales projections of \$45,000 in year one, \$90,000 in year two, and \$180,000 in year three.

The record includes IBISWorld Industry Reports for "Accounting Services in the U.S." and "Management Consulting in the U.S." The "Accounting Services" report indicated that "industry profit margins have improved due to rising accounting fees and higher client volumes" and that "stronger aggregate private investment will fuel industry revenue growth." Likewise, the

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

“Management Consulting” report noted that “improved economic conditions will boost consulting demand.”

In addition, the Petitioner provided articles discussing the value of entrepreneurs to the global economy, the Brazilian business market, the role of entrepreneurship in job creation and economic growth, the complexities of maintaining accounting and tax compliance in different international jurisdictions, the challenges of tax compliance in Brazil, and the value of immigrants to the U.S. economy. The record also contains information about the entrepreneurial legacy of immigrants and their children, international tax considerations as a cost of doing business, immigrant entrepreneurs’ positive impact on the U.S. economy, key elements of the U.S. tax system, the complexities of doing business in Brazil, the financial services industry in the United States, and the benefits associated with immigrant-owned businesses. Furthermore, the Petitioner submitted articles about the U.S. accounting industry, the world’s top 20 economies (including Brazil and the United States), foreign-born entrepreneurs’ contribution to economic activity and job creation, the positive business effects resulting from immigration, the necessity for investing in diverse entrepreneurs, and immigrant entrepreneurship as a driver of U.S. new business growth. The record therefore shows that the Petitioner’s proposed work as a financial services entrepreneur has substantial merit.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890.

The Petitioner maintains on appeal that his proposed work as an entrepreneur in the accounting industry could benefit the United States at a macroeconomic level by “increasing business activity, jobs, and tax revenue.” He further contends that his undertaking “is an essential component in supporting, advancing, and developing cross-border financial initiatives between the U.S. and Latin America.” In addition, the Petitioner argues that his proposed endeavor stands to advance “the national economy, especially in the areas of business, accounting, and finance, and supports the national interests of business growth and creation of American jobs.”

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of his work. Although the Petitioner’s statements reflect his intention to provide valuable financial services for his clients, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find the record does not show that the Petitioner’s proposed endeavor stands to sufficiently extend beyond his clientele to impact the accounting field, the financial services industry, or cross-border business initiatives more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Specifically, he has not shown that his company's future staffing levels, business activity, associated tax revenue, and cross-border financial initiatives stand to provide substantial economic benefits in Florida or the United States. While the sales forecast for [REDACTED] indicates that the company has growth potential, it does not demonstrate that benefits to the regional or national economy resulting from the Petitioner's undertaking would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. In addition, although the Petitioner asserts that his company will hire U.S. employees, he has not offered sufficient evidence that the area where [REDACTED] operates is economically depressed, that he would employ a significant population of workers in that area, or that his endeavor would offer the region or its population a substantial economic benefit through employment levels, business activity, or tax revenue. Moreover, while the Petitioner contends that his proposed endeavor will create "cross-border financial initiatives between the U.S. and Latin America," he has not shown that the prospective impact of the business services performed by his company represents a significant share of the accounting industry or financial services market. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.